

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GREGORY HAAS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 250,240
<b>HAAS AUTO REPAIR</b>	)	
Respondent	)	
AND	)	
	)	
<b>FEDERATED MUTUAL INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed Administrative Law Judge Bryce D. Benedict's January 17, 2002, Award. The Board placed this Award for review on the summary docket without oral argument.

**APPEARANCES**

Claimant appeared by his attorney, Roger D. Fincher of Topeka, Kansas. Respondent appeared by its attorney, M. Joan Klosterman of Kansas City, Missouri. Federated Mutual Insurance Company, appeared by its attorney, Kip Kubin of Overland Park, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Award.

**ISSUES**

This is a request for post-award medical treatment, payment of past medical expenses and payment of medical mileage. The Administrative Law Judge (ALJ) denied the post-award medical request finding claimant had failed to prove his current need for medical treatment was the result of a January 13, 1998, work-related accident and resulting left shoulder injury.

On appeal, claimant contends he established through his testimony that he is in need of medical treatment for his left shoulder injury and such need is the result of his original January 13, 1998, work-related accident. Claimant requests the Board to reverse

the ALJ's Award and grant claimant's request for medical treatment, payment of past medical expenses and payment of medical mileage.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments contained in the claimant's brief, the Board makes the following findings and conclusions:

In an October 16, 2000, Award, claimant was found to have suffered a left shoulder injury on January 13, 1998, while working for the respondent. As a result of that shoulder injury, claimant was awarded a 15.5 percent permanent partial disability of the left upper extremity at the shoulder level.

After the January 13, 1998, work-related accident, claimant came under the care of orthopedic surgeon William T. Jones, M.D. On April 10, 1998, Dr. Jones performed surgery on claimant's left shoulder to repair, among other things, a partial tear of the rotator cuff tendon. On or about February 24, 1999, Dr. Jones returned claimant to his regular work as part-owner and manager of the respondent's automobile repair business. Dr. Jones did not testify in this case nor were his records stipulated into evidence. Claimant testified that he was returned to work without restrictions and he had not done any heavy lifting since he had returned.

Two physicians testified in the original award in regard to claimant's permanent functional impairment and future need for medical treatment. Dr. David A. Tillema testified on behalf of the respondent. He saw claimant on September 27, 1999. At that time, claimant still had some left shoulder pain complaints, but Dr. Tillema did not recommend any further medical treatment.

Dr. Daniel D. Zimmerman testified on behalf of the claimant. He saw claimant on November 12, 1999. During Dr. Zimmerman's examination, claimant also had complaints of some continuing discomfort in his left shoulder. Dr. Zimmerman recommended over-the-counter aspirin or Tylenol type products for the pain and discomfort, but did not recommend any other future medical treatment.

At the August 17, 2000, Regular Hearing, claimant was asked if he needed ongoing medical treatment. Claimant replied, "Not unless my toe gets worse." In addition to a claim for a left shoulder injury, the claimant claimed work-related toe and right knee injuries.

The original award also granted claimant future medical benefits for his left shoulder injury upon application. On April 26, 2001, claimant filed an Application for Post Award Medical pursuant to K.S.A. 44-510k. Claimant requested medical treatment for his left shoulder injury through Dr. Jones, reimbursement for payment of three visits to Dr. Jones and payment of medical mileage. At the October 18, 2001, Post Award Medical Hearing, claimant offered into evidence Dr. Jones' June 1, 2001, medical report. But the insurance

carrier's attorney would not stipulate to the admission of the medical report without deposition testimony. The ALJ, therefore, did not admit the report into the post award medical proceedings.<sup>1</sup>

Claimant testified that his left shoulder remains symptomatic and the symptoms were the same as when he started treating with Dr. Jones for the original injury. Claimant denied that his symptoms were the result of any aggravating accident that had occurred since he had been released to return to work.

At the October 18, 2001, hearing, claimant also offered and the ALJ admitted a billing statement from Dr. Jones. That billing statement showed the times that claimant had been to Dr. Jones to receive medical treatment for his injuries. After claimant was released to return to regular work on February 24, 1999, he saw Dr. Jones on July 26, 1999. Claimant then did not see Dr. Jones again until almost eighteen months later on January 12, 2001. If claimant's left shoulder symptoms remained the same as he testified at the Post Award Medical Hearing, then the question arises why he did not seek medical treatment between July 26, 1999, and January 12, 2001.

The ALJ denied claimant's request for post-award medical treatment finding claimant had failed to prove his current need for medical treatment, if any, was the result of the original January 13, 1998, accident. The Board agrees with the ALJ.

Claimant presented no medical evidence that he has a need for medical treatment for his left shoulder or the need was related to the January 13, 1998 accident. At the time of the original award, there was no evidence contained in the record through either claimant's testimony or the testimony of the examination physicians that claimant needed medical treatment, except for occasional use of over-the-counter pain medications. After claimant was released for regular work without restrictions, he performed repetitive work for the respondent for almost eighteen months before he again went to see Dr. Jones for pain and discomfort in his left shoulder. The Board finds this evidence suggests that the claimant's current left shoulder complaints could just as likely be the result of a series of new accidents that have aggravated claimant's preexisting shoulder condition rather than a natural consequence of the January 13, 1998, accidental injury.<sup>2</sup>

The Board finds claimant has failed to meet his burden of proving that first, he needs additional medical treatment for his left shoulder injury and second, if there is such a need, the need is related to his January 13, 1998, work-related accidental injury.

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<sup>1</sup> See K.S.A. 44-519.

<sup>2</sup> See Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Bryce D. Benedict's January 17, 2002, Award that denied claimant's request for post-award medical treatment should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: : Roger D. Fincher, Attorney for Claimant  
M. Joan Klosterman, Attorney for Respondent  
Kip Kubin, Attorney for Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director